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By Sara Anne Hook, M.B.A., J.D.

May 23, 2016

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- Finding cases.
- Reading and understanding cases.
- Making sure that a case is still good law.
- Mandatory (controlling, binding) v. persuasive authority.
- Dealing with too much or too little case law.
- Other issues.

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 5. [Ye v. Cliff Viessman, Inc.](#), No. 14-cv-01531, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, 2016 U.S. Dist. LEXIS 28882, March 7, 2016, Decided, March 7, 2016, Filed
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 11. [Aguilar v. Recktenwald](#), CIVIL ACTION NO. 3:13-2616, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, 2016 U.S. Dist. LEXIS 2942, January 11, 2016, Decided, January 11, 2016, Filed
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2016 U.S. Dist. LEXIS 45296, *

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AMAYLA THURMOND, Plaintiff, v. MARGARET BOWMAN and WILFRED TOMBS, Defendants.

14-CV-6465W

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

2016 U.S. Dist. LEXIS 45296

March 31, 2016, Decided
March 31, 2016, Filed

CASE SUMMARY

OVERVIEW: HOLDINGS: [1]-In this Fair Housing Act action, even assuming arguendo that plaintiff had a duty to preserve her social media accounts when she commenced the action, the three posts that defendants had proved were deleted from her social network page were deleted inadvertently and were not relevant to this litigation; [2]-No credible evidence in the record demonstrated that plaintiff intentionally or with bad faith deleted posts from her social network account; [3]-The magistrate recommended that defendants' motion for preliminary injunctive relief be denied as defendants now had a printed copy of plaintiff's social network posts during the months prior and subsequent to the alleged discrimination.

OUTCOME: Defendants' motion for sanctions denied. Recommended that defendants' motion for a preliminary injunction be denied.

CORE TERMS: facebook, media, deleted, posting, spoliation, photograph, preservation, printed, destruction, deletion, missing, posted, duty to preserve, email, emotional distress damages, disqualification, emotional, discovery, destroyed, privacy, delete, emotional state, injunctive relief, evidentiary hearing, accessible, altering, emotional distress, bad faith, adverse inference, conflict of interest

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Evidence > Relevance > Spoliation

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Evidence > Relevance > Spoliation

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CORE TERMS: facebook, media, deleted, posting, spoliation, photograph, preservation, printed, destruction, deletion ...

OPINION ... [*2] action on August 11, 2014. (*Id.*). Defendants contend that sometime in November or December 2014 their counsel located several of Thurmond's social media accounts, including **Facebook**, Instagram and Twitter accounts. (Docket # 37-1 at ¶¶ 4-5). According to defendants, they considered relevant several posts [*3] on those accounts and saved "screenshots" of a few of the **Facebook** posts. (*Id.* at ¶ 6 and Exhibit ("Ex.") A; Docket # 82 at 29).

On December 18, 2014, counsel for defendants emailed counsel for Thurmond to ...

... [*3]

scrutiny. When you address this fact let her know about the concept of spoliation so she does not try to delete her text messages and **facebook** account.

(*Id.*).

In a May 15, 2015 letter to the Court from counsel for Thurmond relating to another motion, Thurmond's counsel acknowledged that her client had **Facebook** and Instagram accounts and indicated that the accounts were private and could be viewed only by people authorized by Thurmond. (Docket # 28). In a May 19, 2015 affidavit filed with the Court, Thurmond affirmed that she had **Facebook** and Instagram accounts, both of which were [*4] private and could be viewed only by individuals authorized by Thurmond. (Docket # 31 at ¶ 3).

On May ...

... [*4] prohibiting Thurmond from accessing her social media accounts during the pendency of this action. (Docket # 32). Counsel's supporting declaration asserted that he viewed Thurmond's **Facebook** account at the same time as he received Thurmond's counsel's May 15 letter and observed posts "disappearing" from view on that account. (Docket # 32-...

... [*4] December 28, 2012, the date of the alleged discrimination, and one from two days later. (*Id.* at ¶ 8). Counsel affirmed that "when [p]laintiff's **Facebook** page is observed, there is an obvious gap of posts between December 24, 2012 and May 11, 2014." (*Id.* at ¶ 9 and Ex. C).

At ...

... [*6]

plaintiff shall not alter her social media accounts.

(Docket # 46).

To the affixed motion, defendants maintain that spoliation sanctions are warranted for the deleted **Facebook** posts. (Docket # 37 at ¶¶ 11-23). According to defendants, Thurmond was on notice at least as of the date of the December 18, 2014, email that her **Facebook**...

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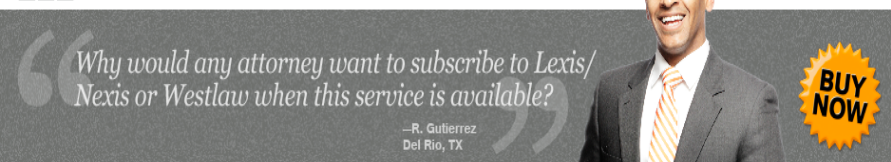
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Indiana	New York	Wyoming
Iowa	North Carolina	Legal Forms
Kansas	North Dakota	
Kentucky	Ohio	

Legal Research
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Browser window showing the Casemaker website. The address bar displays <http://casemakerlegal.com/home.aspx>. The page header includes the Casemaker logo, a search bar with the text "Type your search here", and a dropdown menu for "All States". The navigation bar lists various links: Back to 2.2, Home, Client, My Folders, History, Videos, Help, Webinar, Live Chat, and Sign Out. The main content area is titled "Casemaker Practice Suite" and features a "Get Started" button. The left sidebar contains a "My Accounts" section with 1010 accounts and a list of links: My Settings, Setup Password, Personal Login, My Folder, My Saved Searches, My Search History, My Libra Login, Pleadings by CaseEdge™, CosmoLex Matters, Mobile application, Advanced Search, Legal Research Center, and Legal Forms. The main content area is divided into sections: BROWSE (All Content, Federal Materials, State Materials, Tools, Archive, Legal News), Administrative Codes, Federal Court Rules, Statutes, Attorney General Opinions, Jury Instructions, Title Standards, Bar Journals, Law Reviews, Workers Compensation Decisions, Case Law, Legislative Acts, Legal Forms, Constitutions, Registers/Bulletins, Ethics Opinions, and State Court Rules. The footer displays the Casemaker logo and the text "CASEMAKER © 2016 Lawriter, LLC. All Rights Reserved. | Privacy | Settings | Contact Us | 1-877-659-0801".

Internet Explorer browser window showing the Casemaker website. The address bar displays <http://casemakerlegal.com/stateBooks.aspx?state=Indiana>. The page title is "Casemaker Access - Indiana St...".

The Casemaker logo is visible, along with the tagline "THE LEADER IN LEGAL RESEARCH™". The navigation bar includes links for "All Content", "Indiana", "Back to 2.2", "Home", "Client", "My Folders", "History", "Videos", "Help", "Webinar", "Live Chat", and "Sign Out".

The search bar is labeled "SEARCH" with a "search tips" link. Below the search bar, the text "Brought to you by Indiana State Bar Association" is displayed.

The main content area shows a list of legal resources for Indiana, categorized by type:

- Administrative Code
- Attorney General Opinions
- Case Law
- Code and Acts
- Constitution
- Court Rules
- Ethics Curbstone | Res Gestae
- Ethics Opinions
- Federal Rules
- Res Gestae
- Session Laws

The page is viewed at 125% zoom.

Browser window showing the Casemaker website. The address bar displays <http://casemakerlegal.com/stateBooks.aspx?state=Indiana>. The page title is "Casemaker Access - Indiana St...". The browser tabs show "Casemaker".

The website header includes the Casemaker logo, "THE LEADER IN LEGAL RESEARCH™", and navigation links: "All Content", "Indiana", "Back to 2.2", "Home", "Client", "My Folders", "History", "Videos", "Help", "Webinar", "Live Chat", and "Sign Out". A search bar is present with the text "SEARCH" and "search tips".

The main content area displays a list of legal resources for Indiana:

- [Court Rules](#)
- [Ethics Curbstone | Res Gestae](#)
- [Ethics Opinions](#)
- [Federal Rules](#)
- [Res Gestae](#)
- [Session Laws](#)
- [Tax Court Opinions](#)
- [Unpublished Cases](#)
- [Legal Forms](#)

The footer contains the text: "CASEMAKER © 2014 Lawriter, LLC. All Rights Reserved. | [Privacy](#) | [Settings](#) | [Contact Us](#) | 1-877-659-0801".

Browser window showing the Casemaker website. The address bar displays <http://casemakerlegal.com/caseBrowse.aspx?cat=CASES&categoryAlias=>. The page title is "Casemaker Access - Indiana St...".

The website header includes the Casemaker logo with the tagline "THE LEADER IN LEGAL RESEARCH™". Navigation links include "Back to 2.2", "Home", "Client", "My Folders", "History", "Videos", "Help", "Webinar", "Live Chat", and "Sign Out". A search bar is present with the placeholder text "Type your search here" and a "SEARCH" button. Below the search bar, there are radio buttons for "Keyword", "Cite", "Docket No.", "Panel", and "Combined Search", along with a checkbox for "Turn off Autocorrect".

The main content area shows the breadcrumb "Home > Indiana (View Currency)" and a list of case law categories: "Case Law", "Ind.", "N.E.", "N.E.2d", "N.E.3d", "Ind.App.", and "U.S.P.Q.2d". On the right side, there are radio buttons for "All Federal" and "Related Federal".

The footer contains the copyright notice: "CASEMAKER © 2014 Lawriter, LLC. All Rights Reserved." and links for "Privacy", "Settings", "Contact Us", and a phone number "1-877-659-0801".

The browser window also shows a zoom level of 125% in the bottom right corner.

http://casemakerlegal.com/SearchResult1.aspx?query=%22social+media%22&category/ Casemaker Access - Indiana St... Casemaker

File Edit View Favorites Tools Help

IUPUIScholarWorks Repos... London Art College - dist... eDiscovery Assistant™ Canvas at IU Purdue OWL APA Formatt... New Online-Distance Edu... The World of the String Q... Indy Latino - Be informed... Customer Log In Box

CosmoLex Practice Management

Casemaker
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Results (32)

1 - 20 Sort by: Relevance

"social media"

Back to 2.2 Home Client My Folders History Videos Help Webinar Live Chat Sign Out

All Content Indiana Case Law Save Search SEARCH My Folder search tips

☒ Category: Case Law

Search Within Results

Courts

☐ Supreme Court Of Indiana 4

☐ Court Of Appeals Of Indiana 28

Show All

Cite

Docket Number

Case Name

Judge

Attorney

Date Decided (mm/dd/yyyy)

☐ SELECT ALL CITATIONS IN: ALL

1. Smith v. State, 34 N.E.3d 252 (Ind.App. 2015)

Smith v. State, 34 N.E.3d 252 (Ind.App. 2015) Court of Appeals of Indiana May 13, 2015 34 N.E.3d 252

...J.W. was having conversations with boys on social media sites that were "very sexual in nature." (Transcript ...
...devices, and also had J.W. deactivate her social media accounts. Concerned for her daughter's safety, Smith ...
Short Summary: State produced sufficient evidence to prove beyond a reasonable doubt that defendant mother committed battery; trial court was entitled to conclude that her behavior was excessive, unreasonable, and outside bounds of appropriate parental discipline.

2. Slaybaugh v. State, 79A02-1411-CR-798

Slaybaugh v. State, 79A02-1411-CR-798 Court of Appeals of Indiana September 24, 2015

...publicity, both in the news outlets and on social media websites such as Facebook. Id. at 218. The...
...Neither party, however, asked the juror about any social media relationships she may have had with any potential...
Short Summary: Appellant's argument that the trial court abused its discretion by finding that the Juror was truthful during voir dire was nothing more than an invitation to reweigh the evidence and the court's credibility determination

3. Harris v. State, 985 N.E.2d 767 (Ind.App. 2013)

Harris v. State, 985 N.E.2d 767 (Ind.App. 2013) Court of Appeals of Indiana March 27, 2013 985 N.E.2d 767

...is nothing dangerous about Doe's use of social media as long as he does not improperly communicate...
...an acute risk— those individuals whose presence on social media impels them to solicit children. Currently, the state ...
Short Summary: Defendant's conviction under Ind. Code § 35-42-4-12 violates the First Amendment; his constitutional challenges to I.C. § 11-8-8-8(a)(7) under the First Amendment as well as Article 1, Sections 9 and 24 of the Indiana Constitution fail; State produced sufficient evidence to support conviction under I.C. § 11-8-8-17.

4. W.P. v. Indiana Dep't of Child Servs., 41 N.E.3d 307 (Ind.App. 2015)

W.P. v. Indiana Dep't of Child Servs., 41 N.E.3d 307 (Ind.App. 2015) Court of Appeals of Indiana October 15, 2015 41 N.E.3d 307

http://casemakerlegal.com/docView.aspx?DocId=4027368&Index=D%3a%5cdtsearch%5... Casemaker Access - Indiana St... Casemaker

File Edit View Favorites Tools Help

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Back to 2.2 Home Client My Folders History Videos Help Webinar Live Chat Sign Out

All Content Indiana Case Law

SEARCH My Folder

search tips

Brought to you by Indiana State Bar Association

Document Citing References(11) Case Summary Negative Treatment (0)

"social media"

Return to Results 3 of 32 Results Search Term Page 767 Aa Notes

Harris v. State, 985 N.E.2d 767 (Ind.App. 2013)

Harris v. State, 985 N.E.2d 767 (Ind.App. 2013) Court of Appeals of Indiana March 27, 2013 985 N.E.2d 767

No negative treatment in subsequent cases

Short Summary

Defendant's conviction under Ind. Code § 35-42-4-12 violates the First Amendment; his constitutional challenges to I.C. § 11-8-8-8(a)(7) under the First Amendment as well as Article 1, Sections 9 and 24 of the Indiana Constitution fail; State produced sufficient evidence to support conviction under I.C. § 11-8-8-17.

985 N.E.2d 767

985 N.E.2d 767 (Ind.App. 2013)

Michael L. HARRIS, Appellant-Defendant,

v.

STATE of Indiana, Appellee-Plaintiff.

No. 20A04-1204-CR-225.

Court of Appeals of Indiana.

March 27, 2013

985 N.E.2d 768

[Copyrighted Material Omitted]

http://casemakerlegal.com/docView.aspx?DocId=4027368&Index=D%3a%5cdtsearch%5cindex%5c01Test%5cALL%5fCITED%5fCASE&HitCount=5&hits=e10+e11+11ea+11eb+217+&isFirstPass=&categoryAlias=Case Law&fCount=32&cf=2&dt=CASE&jurisdictions.allFederal=False&jurisdictions.allStates=False&searchType=BROWSE&bReqSt= 23 100%

Court of Appeals of Indiana March 27, 2013

Areas of practice: Constitution/Criminal/Evidence/Procedure

Judge: Patricia A. Riley

Case Summary

The appellant appealed his conviction and sentence for Count I, failure to register as a sex offender, a Class D felony, and Count II, sex offender internet offense, a Class A misdemeanor. The appellate court found that the appellee State's argument on narrow tailoring, an issue under which it had the burden, failed under *Doe v. Town of Plainfield*, 893 N.E.2d 1124, (Ind. Ct. App. 2008) and the State had not successfully invoked the administrability exception under the circumstances. Without detailed explanations on how social networking web sites operated, the State's argument was not only insufficient to establish justification under *City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984) and *Hill*, but also did not fall within the hypothetical, narrowly drawn statute described in *Doe*. And, the State's proffered narrow tailoring justification for I.C. Section 35-42-4-12 was unsustainable in light of the *Doe* opinion. Overbreadth analysis was inapplicable and the appellant's challenge was properly viewed as an as-applied challenge. Therefore, the appellate court held that section 35-42-4-12 was unconstitutional as applied to the appellant and reversed his conviction under the statute. However, the appellant's constitutional challenges to section 11-8-8-8(a)(7) under the First Amendment as well as Article 1, Sections 9 and 24 of the Indiana Constitution failed. Finally, the State produced sufficient evidence to support the appellant's conviction under section 11-8-8-17. Accordingly, the judgment was affirmed and reversed in part.

Browser address bar: <http://casemakerlegal.com/docView.aspx?DocId=4027368&Index=D%3a%5cdtssearch%5c>

Navigation bar: File Edit View Favorites Tools Help

Search bar: SEARCH My Folder search tips

Document Citing References(11) Case Summary Negative Treatment (0)

985 N.E.2d 767 (Ind.App. 2013), 20A04-1204-CR-225, Harris v. State

Court of Appeals of Indiana March 27, 2013 985 N.E.2d 767

Search Within Results

GO

Within Search Result

Indiana 7

U.S. District Court 2

Illinois 2

Pennsylvania 1

☐ Harris v. Commissioner, 040215 INDC, 3:13-CV-857

United States District Court, N.D. Indiana, South Bend Division April 2, 2015 3:13-CV-857

...Appeals of Indiana affirmed in Harris v. State, 985 N.E.2d 767 (Ind.Ct.App. 2013) (DE 7-6); and ...

...sufficiency of the evidence claim. Harris v. State, 985 N.E.2d 767, 783-84 (Ind.Ct. ...

☐ 30 N.E.3d 788 (Ind.App. 2015), 20A03-1406-CR-222, Walker v. State

Court of Appeals of Indiana March 12, 2015 30 N.E.3d 788

...most favorable to the verdict. Harris v. State, 985 N.E.2d 767, 784 (Ind.Ct.App. 2013), trans. denied. We...

☐ 30 N.E.3d 786 (Ind.App. 2015), 45A05 1406 CR 277, Pizano v. State

Court of Appeals of Indiana March 5, 2015 30 N.E.3d 786

...to relevant authority.[3]See Harris v. State, 985 N.E.2d 767, 783 (Ind.Ct.App. 2013), trans. denied. II ...

☐ 102 A.3d 1254 (Pa.Cmwth. 2014), 214 M.D. 2013, Coppolino v. Commissioner of Pennsylvania State Police

Commonwealth Court of Pennsylvania October 14, 2014 102 A.3d 1254

...to anonymous speech. Id. In Harris v. State, 985 N.E.2d 767 (Ind. App. 2013), the Indiana Court of Appeals...

☐ 18 N.E.3d 292 (Ind.App. 2014), 12A02-1404-AD-255, In re Adoption and Paternity of K.G.B.

Court of Appeals of Indiana September 26, 2014 18 N.E.3d 292

...facts of the particular case." Harris v. State, 985 N.E.2d 767, 774 (Ind.Ct.App. 2013), trans. denied. Hazlwood...

http://casemaker.cogal.com/SearchResult.aspx?query=%22social+media%22&categoryf... Casemaker Access - Indiana St... Casemaker

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Back to 2 2 Home Client My Folders History Videos Help Webinar Live Chat Sign Out

All Content Indiana Case Law Save Search SEARCH search tips My Folder

1 - 20 Sort by: Relevance "social media"

Number of Citations

Year Cited

2015

Indiana Federal Other

of Indiana May 13, 2015 34 N.E.3d 252

sexual in nature." (Transcript ...

her daughter's safety, Smith ...

le doubt that defendant mother committed battery; trial court was entitled to conclude that her behavior was excessive, unreasonable, and outside bounds of appropriate parental discipline.

Indiana September 24, 2015

ook. Id. at 218. The...

...Neither party, however, asked the juror about any social media relationships she may have had with any potential...

Short Summary Appellant's argument that the trial court abused its discretion by finding that the juror was truthful during voir dire was nothing more than an invitation to reweigh the evidence and the court's credibility determination

☐ 3. Harris v. State, 985 N.E.2d 767 (Ind.App. 2013) ⓘ

Harris v. State, 985 N.E.2d 767 (Ind.App. 2013) Court of Appeals of Indiana March 27, 2013 985 N.E.2d 767

...is nothing dangerous about Doe's use of social media as long as he does not improperly communicate...

...an acute risk— those individuals whose presence on social media impels them to solicit children. Currently, the state ...

Short Summary Defendant's conviction under Ind. Code § 35-42-4-17 violates the First Amendment; his constitutional challenges to I.C. § 11-8-8-1(7) under the First Amendment as well as Article 1, Sections 9 and 24 of the Indiana Constitution fail; State produced sufficient evidence to support conviction under I.C. § 11-8-8-17.

☐ 4. W.P. v. Indiana Dep't of Child Servs., 41 N.E.3d 307 (Ind.App. 2015) ⓘ

W.P. v. Indiana Dep't of Child Servs., 41 N.E.3d 307 (Ind.App. 2015) Court of Appeals of Indiana October 15, 2015 41 N.E.3d 307

Date Decided (mm/dd/yyyy)

Finding and Using Free Full-Text Case Law Sites

- There are many websites that provide access to the full-text of case law as well as other helpful information about state and federal courts.
- Of course, these websites may not have all of the functionality of Lexis/Nexis or Westlaw.
- However, as the competition in the legal marketplace increases, clients may be less willing to pay for legal research (instead, seeing this as overhead the that law firm should cover itself).
- A hybrid strategy may also be in order:
 - Start with the free services
 - Then use Lexis/Nexis or Westlaw to verify that the case is still good law
- Levitt and Davis provide a long list of options.
- But let's start with one of the most popular and easiest to access: following list:
 - Google Scholar: <http://scholar.google.com/>



Search input field with a dropdown arrow and a blue search button.

- Search filters:
- ☐ Articles ☐ include patents ☒ Case law
 - ☐ Federal courts ☐ Indiana courts [Select courts...](#)

Stand on the shoulders of giants

http://scholar.google.com/scholar_courts?hl=en&as_sdt=015 Google Scholar - Select Co... x

File Edit View Favorites Tools Help

ITechLaw Conferences London Art College - dist... eDiscovery Assistant™ Canvas at IU Purdue OWL APA Formatt... New Online-Distance Edu... The World of the String Q... Indy Latino - Be informed... Customer Log In Box

Web Images More... Sign in

Google

Scholar Done Cancel

Select courts

State courts Select all Clear all		Federal courts Select all Clear all	
<input type="checkbox"/> Alabama	<input type="checkbox"/> Missouri	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> 7th Circuit
<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Court of Claims	<input type="checkbox"/> Court of Appeals
<input type="checkbox"/> Court of Civil Appeals	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Court of Customs and Patent Appeals	<input type="checkbox"/> CD Illinois
<input type="checkbox"/> Court of Criminal Appeals	<input type="checkbox"/> Montana	<input type="checkbox"/> Court of Intl. Trade	<input type="checkbox"/> ND Illinois
<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Customs Court	<input type="checkbox"/> SD Illinois
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<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Board of Tax Appeals	<input type="checkbox"/> SD Indiana
<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> 1st Circuit	<input type="checkbox"/> ED Wisconsin
<input type="checkbox"/> Arizona	<input type="checkbox"/> Nevada	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> WD Wisconsin
<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> D. Maine	<input type="checkbox"/> Bankruptcy Courts
<input type="checkbox"/> Supreme Court	<input type="checkbox"/> New Hampshire	<input type="checkbox"/> D. Massachusetts	<input type="checkbox"/> 8th Circuit
<input type="checkbox"/> Arkansas	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> D. New Hampshire	<input type="checkbox"/> Court of Appeals
<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> New Jersey	<input type="checkbox"/> D. Puerto Rico	<input type="checkbox"/> Minnesota
<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Appellate Div.	<input type="checkbox"/> D. Rhode Island	<input type="checkbox"/> D. Nebraska
<input type="checkbox"/> California	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Bankruptcy Courts	<input type="checkbox"/> D. North Dakota
<input type="checkbox"/> Appellate Div.	<input type="checkbox"/> New Mexico	<input type="checkbox"/> Bankruptcy Appellate Panel	<input type="checkbox"/> D. South Dakota
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<input type="checkbox"/> Supreme Court	<input type="checkbox"/> New York	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> WD Arkansas
<input type="checkbox"/> Colorado	<input type="checkbox"/> Appellate Div.	<input type="checkbox"/> D. Connecticut	<input type="checkbox"/> ND Iowa
<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Appellate Term	<input type="checkbox"/> D. Vermont	<input type="checkbox"/> SD Iowa
<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> ED New York	<input type="checkbox"/> ED Missouri
<input type="checkbox"/> Connecticut	<input type="checkbox"/> North Carolina	<input type="checkbox"/> ND New York	<input type="checkbox"/> WD Missouri
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<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> WD New York	<input type="checkbox"/> Bankruptcy Appellate Panel
<input type="checkbox"/> Delaware	<input type="checkbox"/> North Dakota	<input type="checkbox"/> Bankruptcy Courts	<input type="checkbox"/> 9th Circuit
<input type="checkbox"/> Court of Chancery	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> Bankruptcy Appellate Panel	<input type="checkbox"/> Court of Appeals
<input type="checkbox"/> Superior Court	<input type="checkbox"/> Supreme Court	<input type="checkbox"/> 3rd Circuit	<input type="checkbox"/> D. Alaska
<input type="checkbox"/> Supreme Court	<input type="checkbox"/> Ohio	<input type="checkbox"/> Court of Appeals	<input type="checkbox"/> D. Arizona
<input type="checkbox"/> Dist. of Columbia			

100%

Browser window showing Google Scholar search results for "predictive coding".

Address bar: <http://scholar.google.com/>

Navigation bar: My library, My Citations, Alerts, Metrics, Settings, Sign in

Google Scholar logo

Search bar: predictive coding

Search results filters:

- ☐ Articles ☐ include patents ☒ Case law
- ☐ Federal courts ☐ Indiana courts [Select courts...](#)

Stand on the shoulders of giants

Footer: About Google Scholar, Privacy, Terms

Zoom: 100%

The screenshot shows a Google Scholar search results page for the query "predictive coding". The browser address bar shows the URL: http://scholar.google.com/scholar?hl=en&q=predictive+coding&btnG=&as_sdt=800. The search bar contains "predictive coding" and the results are sorted by relevance. The left sidebar shows filters for "Articles", "Case law", "Federal courts", "Indiana courts", "Select courts...", "My library", "Any time", "Since 2016", "Since 2015", "Since 2012", "Custom range...", "Sort by relevance", "Sort by date", "include citations", and "Create alert". The main results list includes:

- [CITATION] Da Silva Moore v. Publicis Groupe**
2012 F.R.D. 102, 2012 WL 607412 - 2012
Cited by 103 How cited Related articles Cite Save
- Sierra Club v. Simkins Industries, Inc.**
847 F.2d 1109 - Court of Appeals, 4th Circuit, 1988 - Google Scholar
847 F.2d 1109 (1988). SIERRA CLUB, Plaintiff-Appellee, v. SIMKINS INDUSTRIES, INC., Defendant-Appellant. No. 07-1600. United States Court of Appeals, Fourth Circuit. Argued November 4, 1987. Decided May 31, 1988. Rehearing and Rehearing Denied July 27, 1988. ...
Cited by 206 How cited Related articles Cite Save
- US v. State of Ala**
828 F.2d 1532 - Court of Appeals, 11th Circuit, 1987 - Google Scholar
828 F.2d 1532 (1987). UNITED STATES of America, Plaintiff-Appellee, John F. Knight, Jr., et al., individually and on behalf of others similarly situated, Plaintiffs-Intervenors-Appellees, v. The STATE OF ALABAMA; George C. Wallace ...
Cited by 109 How cited Related articles Cite Save
- Shaw v. Martin**
733 F.2d 304 - Court of Appeals, 4th Circuit, 1984 - Google Scholar
733 F.2d 304 (1984). Joseph Carl SHAW, Appellant, v. Joseph R. MARTIN, Warden, Central Correctional Institution, and Hon. Daniel R. McLeod, Attorney General for South Carolina, Appellees. No. 83-6272. United States Court of Appeals, Fourth Circuit. ...
Cited by 150 How cited Related articles Cite Save
- Wu v. Thomas**
996 F.2d 271 - Court of Appeals, 11th Circuit, 1993 - Google Scholar
996 F.2d 271 (1993). Dr. Kathleen Johnson WU, Dr. Hsiu-Kwang Wu, Plaintiffs-Appellants, v. Joah THOMAS, University of Alabama Board of Trustees, a body corporate, Roger E. Sayers, individually and in his official capacity ...
Cited by 82 How cited Related articles Cite Save
- [CITATION] Moore v. Publicis Groupe**
2012 WL 607412, 2012 US Dist. LEXIS 23360 - 2012
Cited by 24 How cited Related articles Cite Save
- [CITATION] Sierra Club v. Simkins Indus., Inc.**
491 US 904, 109 S. Ct. 3185, 105 L. Ed. 2d 694 - Supreme Court, 1989
Cited by 72 How cited Related articles Cite Save
- United States v. LOUISIANA ET AL.**
485 US 88, 99 L. Ed. 2d 83, 108 S. Ct. 901 - Supreme Court, 1988 - Google Scholar
485 US 88 (1988). UNITED STATES v. LOUISIANA ET AL. (ALABAMA AND MISSISSIPPI BOUNDARY CASE). No. 9. On: Supreme Court of United States. Argued January 11, 1988. Decided March 1, 1988. ON EXCEPTIONS TO REPORT OF SPECIAL MASTER. ...

Note that I have many choices on the left hand side of the screen, including by courts, by time period and sorted by either date or relevance. I will sort by date and ask for only cases since 2016.



predictive coding



Scholar

5 results (0.02 sec)

My Citations

Articles

Case law

Federal courts

Indiana courts

Select courts...

My library

Any time

Since 2016

Since 2015

Since 2012

Custom range...

Sort by relevance

Sort by date

☒ include citations

☒ Create alert

Martinelli v. Johnson & Johnson

Dist. Court, ED California, 2016 - Google Scholar

8 days ago - ... with the identification of relevant ESI for review and production, the parties may meet and confer to discuss either the use of reasonable search terms, file types, and date ranges, or the use of advanced search and retrieval technologies, including **predictive coding** or ...

[Cite](#) [Save](#)

NEW MEXICO STATE INVESTMENT COUNCIL v. Weinstein

NM: Court of Appeals, 2016 - Google Scholar

28 days ago - ... Its document review was facilitated by e-discovery techniques of **predictive coding**, concept grouping, near-duplication detection, and email threading. Day Pitney also conducted interviews with twenty-three individuals, including over a dozen NMSIC employees. ...

[Cite](#) [Save](#)

IN RE POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION

Dist. Court, ED Louisiana, 2016 - Google Scholar

59 days ago - ... The Court has a hard time accepting that a **coding** issue this significant would not also cause problems for Dr. Rausser's results ... The plaintiffs' expert constructed a model that used variables representing cost, demand, and other **predictive** factors to predict what prices ...

[Cite](#) [Save](#)

KISSING CAMELS SURGERY CENTER, LLC v. CENTURA HEALTH CORPORATION

Dist. Court, D. Colorado, 2016 - Google Scholar

90 days ago - ... Defendants informed the court that they populated their own electronic discovery platform with the data from Plaintiffs to their great expense (from both a financial and human resources perspective) to permit Defendants to search the production and use **predictive coding** ...

[Cite](#) [Save](#)

LUXUL TECHNOLOGY INC. v. NECTARLUX, LLC

Dist. Court, ND California, 2016 - Google Scholar

92 days ago - ... In addition, they will file a declaration(s) explaining in detail the search protocol, including all search terms, any **predictive coding** used, or the like. Tell why this search approach was used rather than some other. Were lines or attachments eliminated from the production ...

[Cite](#) [Save](#)

☒ Create alert

Google Scholar search results for "predictive coding". The interface shows a list of articles with filters on the left and a "Cite" dialog box open over the first result.

Search Results:

- Martinelli v. Johnson & Johnson**
Dist. Court, ED California, 2016 - Google Scholar
8 days ago - ... with the identification of relevant ESI for review and production, the parties meet and confer to discuss either the use of reasonable search terms, file types, and dates or the use of advanced search and retrieval technologies, including **predictive coding**.
[Cite](#) [Save](#)
- NEW MEXICO STATE INVESTMENT COUNCIL v. Weinstein**
NM: Court of Appeals, 2016 - Google Scholar
28 days ago - ... Its document review was facilitated by e-discovery techniques of predictive concept grouping, near-duplication detection, and email threading. Day Pitney also conducted interviews with twenty-three individuals, including over a dozen NMSIC employees. ...
[Cite](#) [Save](#)
- IN RE POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION**
Dist. Court, ED Louisiana, 2016 - Google Scholar
59 days ago - ... The Court has a hard time accepting that a **coding** issue this significant would not also cause problems for Dr. Rausser's results ... The plaintiffs' expert constructed a model that used variables representing cost, demand, and other **predictive** factors to predict what prices ...
[Cite](#) [Save](#)
- KISSING CAMELS SURGERY CENTER, LLC v. CENTURA HEALTH CORPORATION**
Dist. Court, D. Colorado, 2016 - Google Scholar
90 days ago - ... Defendants informed the court that they populated their own electronic discovery platform with the data from Plaintiffs to their great expense (from both a financial and human resources perspective) to permit Defendants to search the production and use **predictive coding** ...
[Cite](#) [Save](#)
- LUXUL TECHNOLOGY INC. v. NECTARLUX, LLC**
Dist. Court, ND California, 2016 - Google Scholar
92 days ago - ... In addition, they will file a declaration(s) explaining in detail the search protocol, including all search terms, any **predictive coding** used, or the like. Tell why this search approach was used rather than some other. Were lines or attachments eliminated from the production ...
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Bluebook Martinelli v. Johnson & Johnson, No. 2:15-cv-01733-MCE-EFB (E.D. Cal. Apr. 13, 2016)

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If you click on Cite, you get the citation in proper format.

Martinelli v. Johnson & Johnson, Dist. Court, ED California 2016

Google Scholar

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Highlighting predictive coding x

**JOANN MARTINELLI, individually and on behalf of all others
similarly situated, Plaintiff,**

v.

**JOHNSON & JOHNSON and McNEIL NUTRITIONALS, LLC,
Defendants.**

[Case No. 2:15-cv-01733-MCE-EFB](#)

United States District Court, E.D. California.

April 13, 2016.

STIPULATED ESI AND HARD COPY PROTOCOL

MORRISON C. ENGLAND, Jr., Chief District Judge.

STIPULATED ESI AND HARD COPY PROTOCOL

The Parties hereby agree to the following protocol for production of electronically stored information ("ESI") and paper ("hardcopy") documents. Subject to the agreed upon Protective Orders in this Action, this protocol governs all productions in this action. This protocol has the objective to facilitate the just, speedy, and inexpensive completion of discovery of ESI and hardcopy documents and to promote, whenever possible, the early resolution of disputes, including any disputes pertaining to scope or costs regarding the discovery of ESI without Court intervention. Nothing in this protocol shall limit a party's right to seek or object to discovery as set out in applicable rules, to rely on any Protective Order entered in this action concerning protection of confidential or otherwise sensitive information, or to object to the authenticity or admissibility of any hardcopy document or ESI produced in accordance with this protocol. The mere production of ESI as part of a mass production shall not itself constitute a waiver for any purpose.

5. Use of Search Filters

a. To contain costs associated with the identification of relevant ESI for review and production, the parties may meet and confer to discuss either the use of reasonable search terms, file types, and date ranges, or the use of advanced search and retrieval technologies, including **predictive coding** or other technology-assisted review. The parties agree to meet and confer in good faith to reach agreement on a list of search terms and protocols for the production of ESI. During such discussions, the producing party shall retain the sole right and responsibility to manage and control searches of its data files. If the producing party makes revisions to search terms or advanced technology procedures in order to make them more accurate and cost-effective, the producing party agrees to meet and confer with the requesting party regarding such revisions. A party's failure to meet and confer or to make a timely request for different or additional searches as described in this paragraph shall waive that party's right to object to the sufficiency of the searches actually conducted.

b. If, prior to the conduct of any searches, a receiving party believes in good faith that the producing party's decisions would result in deficiencies in production, the receiving party may make prompt, reasonable requests for different or additional searches. The producing party shall respond reasonably to such requests. Any proposed search terms shall be narrowly tailored to particular a issue. Indiscriminate terms, such as the producing party's name or its product names, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of over-inclusion.

c. The fact that any electronic file has been identified in agreed-upon searches shall not prevent any party from withholding such file from production on the ground that it is protected from disclosure by applicable privilege or immunity, that is protected from disclosure by California Civil Code § 1798.1 or that the Protective Order entered in this Action allows to be withheld.

d. Nothing in this section shall limit a party's right to seek reasonably agreement from the other parties or a Court ruling to modify previously agreed-upon search terms or procedures for advanced search and retrieval technologies.

e. The producing party shall propose an initial list of search terms to the requesting party. The parties agree to meet and confer in good faith to finalize a list of acceptable search terms within sixty (60) days of finalizing the Final Custodian List. Should the parties be unable to resolve any disputes cooperatively, they shall promptly bring their unresolved dispute(s) to the Court's attention.

Da Silva Moore v. Publicis Groupe, 868 F. Supp. 2d 137 - Dist. Court, SD New York 2012

Read How cited Search

868 F.Supp.2d 137 (2012)

Monique **DA SILVA MOORE**, et al., Plaintiffs,
v.
PUBLICIS GROUPE & MSL Group, Defendants.

[No. 11 Civ. 1279\(ALC\)\(AJP\)](#)

United States District Court, S.D. New York.

June 15, 2012.

140 *140 Jeremy Heisler, Deepika Bains, Steven Lance Wittels, Sanford Wittels & Heisler, LLP, Siham Nurhussein, Clifford Chance U.S., LLP, New York, NY, David W. Sanford, Sanford, Wittels & Heisler, LLP, Washington, DC, Janette Lynn Wipper, Sanford Wittels & Heisler, LLP, San Francisco, CA, for Plaintiffs.

Melissa Ruth Kelly, Morgan, Lewis & Bockius LLP, New York, NY, Krissy Anne Katzenstein, Morgan, Lewis & Bockius LLP, Washington, DC, Paul C. Evans, Morgan Lewis & Bockius, LLP, Philadelphia, PA, Noel P. Tripp, Paul J. Siegel, Jeffrey W. Brecher, Jackson Lewis LLP, Melville, NY, Brett Michael Anders, Jackson Lewis LLP, Morristown, NJ, Victoria Woodin Chavey, Jackson Lewis LLP, Hartford, CT, for Defendants.

OPINION AND ORDER

ANDREW J. PECK, United States Magistrate Judge:

Plaintiffs' "Motion for Recusal or Disqualification" (Dkt. No. 169) is based not on any claim that the Court has an actual bias, but rather on "an appearance of partiality." (Dkt. No. 192: Pls. Reply Br. at 1 n. 1: "Plaintiffs have never accused Judge Peck of actual bias or sought to impugn Judge Peck's integrity. Plaintiffs' only ground for recusal is that the facts taken together create an appearance of partiality.") Plaintiffs' recusal motion is *DENIED*.

100%

Major case that supported the use of predictive coding that has been cited often. We can check on it prospectively (and perhaps see if it is still good law) and selecting How Cited at the top left-hand side of the screen.

Da Silva Moore v. Publicis Groupe, 868 F. Supp. 2d 137 - Dist. Court, SD New York 2012

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- 66 Typically, this procedure allows a set of hundreds of thousands of documents (or more) to be coded for responsiveness by the software, even though only a few thousand have actually undergone examination by a senior attorney or partner **
- in [Unchaining E-Discovery in the Patent Courts](#) and 4 similar citations
- 66 "To establish a basis for recusal, [m] ovants must overcome a presumption of impartiality, and the burden for doing so is substantial." **
- in [DEKOM v. Nassau County, 2013](#) and 3 similar citations
- 66 When using predictive coding, counsel should understand how the software addresses recall, precision, and accuracy, as early computer-assisted review projects likely will require additional education for the reviewing court **
- in [The E-Discovery Dance for Patent Litigation: The Federal Circuit Tries to ...](#) and 2 similar citations
- 66 "A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." **
- in [In re American Medical Utilization Management Corp., 2013](#) and 2 similar citations
- 66 Both Magistrate Judge Peck and the Second Circuit Court of Appeals rejected plaintiffs' arguments that voicing public support for ESI or appearing on a CLE panel with a lawyer constituted grounds for recusal or disqualification from this case. **
- in [IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE ...](#) and one similar citation
- 66 Opinions While the **Da Silva Moore** case has become instantly famous for being the first to "recognize [] that computer-assisted review is an acceptable way to search for relevant ESI in appropriate cases **
- in [Predictive coding: Emerging questions and concerns](#) and one similar citation
- 66 —requesting that a magistrate judge recuse himself because his order to use predictive coding allegedly demonstrated an "appearance of partiality **
- in [Protecting Search Terms as Opinion Work Product: Applying the Work Product ...](#) and one similar citation
- 66 Discretion is confided in the district judge in the first instance to determine whether to disqualify himself **
- in [Disqualifying Judges When Their Impartiality Might Reasonably Be Questioned ...](#) and one similar citation
- 66 Interestingly, the final effect of this opinion was delayed for a year pending the plaintiffs' attempt to disqualify presiding Magistrate Judge Andrew Peck. **
- in [Predictive Coding and the Proportionality Doctrine: A Marriage Made in Big Data](#) and one similar citation

Cited by

- [FOND DU LAC BUMPER EXCHANGE, INC. v. JUI LI ENTERPRISE COMPANY, LTD.](#)
Dist. Court, ED Wisconsin 2015
- [Clemmons v. Holder](#)
Dist. Court, ED New York 2014
- [Fischer v. NYS BOARD OF ELECTIONS](#)
Dist. Court, ED New York 2013
- [DEKOM v. Nassau County](#)
Dist. Court, ED New York 2013
- [DEKOM v. Cuomo](#)
Dist. Court, ED New York 2013

[all 19 citing documents »](#)

Related documents

- [Metropolitan Opera Ass'n, Inc. v. Local 100, Hotel Employees and Restaurant ...](#)
332 F. Supp. 2d 667 - Dist. Court, SD New York 2004
- [\[CITATION\] EORHB, Inc. v. HOA Holdings LLC](#)
2012 WL 4896670 - 2012
- [MONIQUE DA SILVA MOORE v. PUBLICIS GROUPE & MSL GROUP](#)
Dist. Court, SD New York 2012
- [Thorpe v. Zimmer, Inc.](#)
590 F. Supp. 2d 492 - Dist. Court, SD New York 2008
- [\[CITATION\] In re Biomet M2A Magnum Hip Implant Prods. Liab. Litig](#)
2013 WL 1729682 - 2013

[all related documents »](#)

Lots of terrific content here, including other cases that cite it and when it has been included in other publications.

From Levitt and Davis

- FindLaw: <http://lp.findlaw.com/#casesearch>, accessed 4/21/16.
- The Public Library of Law: <http://www.plol.org>, accessed 4/21/16.
- The Free Law Reporter 2011--): <http://www.freelawreporter.org>, accessed 4/21/16.
- FindACase Network (free from VersusLaw): <http://findacase.com>, accessed 4/21/16.
- Justia's U.S. Supreme Court Center: <http://supreme.justia.com>, accessed 4/21/16 and links to cases from other courts: <http://law.justia.com/cases/>, accessed 4/21/16.
- Oyez (for free U.S. Supreme Court resources): <http://www.oyez.org>, accessed 4/21/16.
- Casetext (a “crowdsourced” source for legal research and commentary): <https://casetext.com>, accessed 4/21/16.
- Supreme Court of the United States: <http://www.supremecourt.gov>, accessed 4/21/16.

Other Websites

- Other websites that are useful when doing legal research are:
 - Administrative Offices of the U.S. Courts: <http://www.uscourts.gov>, accessed 4/21/16.
 - Seventh Circuit: <http://www.ca7.uscourts.gov/>, accessed 4/21/16.
 - Other Circuit Court websites.
 - National Center for State Courts: <http://www.ncsc.org/>, accessed 4/21/16.
 - United States Federal & State Courts, Internet Legal Research Group: <http://www.ilrg.com/caselaw>, accessed 4/21/16.
 - American Law Sources On-line (U.S., Canada, Mexico): <http://www.lawsource.com/also>, accessed 4/21/16.
 - Legal Dockets On-line: <http://www.legaldockets.com>, accessed 4/21/16.

Other Websites

- LLRX Court Rules, Forms and Dockets:
<http://www.llrx.com/courtrules>, accessed 4/21/16.
- SunEthics.com: <http://sunethics.com>, accessed 4/21/16.
- Southern District of Indiana: <http://www.insd.uscourts.gov>, accessed 4/21/16.
- Northern District of Indiana: <http://www.innd.uscourts.gov/>, accessed 4/21/16.
- Other District courts in the U.S.
- Indiana Courts: <http://www.in.gov/judiciary/>, accessed 4/21/16.
- Other state court websites.
- *See also* the long lists of starting points for legal research as Exhibit 9-4 in Matthew S. Cornick, *Using Computers in the Law Office*, 7th ed. Boston, MA: Cengage Learning, 2015.

State Court Records - Indiana

- In terms of Indiana, more of the state court case records are available online, depending on when the county and its courts begin using the new electronic filing system called the Odyssey Case Management System. (<https://mycase.in.gov/default.aspx>, accessed 4/21/16).
- For a list of the courts that use Odyssey and how far back their records go, see <http://www.in.gov/judiciary/4234.htm>.
- See similar websites in other states.

Browser window showing the URL <https://mycase.in.gov/default.aspx>. The page title is "Indiana Courts – Case Search". Navigation links include "Skip to Main Content", "Logout", "My Account", and "Help".



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This is the public access site for Odyssey Case Management System for Indiana Courts and Clerks.

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- On the search screen, you'll be asked to read and enter characters on a CAPTCHA image. If you have trouble reading it, click the speaker button to the right of the image to hear the code read aloud or click the refresh button to display a different image.

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Which courts use Odyssey and mycase.in.gov?

Case information available at <https://mycase.in.gov/> comes only from courts that use the state's Odyssey case management system. Following is a list of the courts/counties that use Odyssey and the dates they began using the system. Also included are courts scheduled to begin using Odyssey in the near future, abolished courts with archived cases still in Odyssey, and courts with renumbered identifiers. See [Administrative Rule 8](#) for more about Indiana's uniform case numbering system.

Appellate Courts

Court Identifier	Courts/County	Go Live Date
See A.R. 8.1	Indiana Supreme Court	5/1/2015
See A.R. 8.1	Indiana Court of Appeals	5/1/2015
See A.R. 8.1	Indiana Tax Court	12/1/2014

Trial Courts

Court Identifier	Courts/County	Go Live Date
	Starke County	Scheduled for 2016
	Delaware County	Scheduled for 2016
	Tippecanoe County	Scheduled for 2016
	Bartholomew County	Scheduled for 2016
	Crawford County	Scheduled for 2016
	Perry County	Scheduled for 2016
02C01	Allen Circuit Court	9/7/2010
02D01	Allen Superior Court 1	1/18/2011
02D02	Allen Superior Court 2	1/18/2011
02D03	Allen Superior Court 3	1/18/2011
02D04	Allen Superior Court 4	9/7/2010
02D05	Allen Superior Court 5	9/7/2010
02D06	Allen Superior Court 6	9/7/2010
02D07	Allen Superior Court 7	11/26/2012
02D08	Allen Superior Court 8	11/26/2012
02D09	Allen Superior Court 9	1/18/2011
02H01	Allen/New Haven City Court	6/15/2009

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The Indiana State Bar Association was founded on June 23, 1896, in the hall of the Indiana House of Representatives with more than 100 lawyers present. Benjamin Harrison served as the Association's first president. Three years earlier he had concluded his service as the nation's 23rd president.

Today, the ISBA is the largest legal organization in the state. With more than 12,000 members, the Association continues to serve and advocate on behalf of its members, their clients and Indiana's citizenry as the independent voice of the state's legal profession.

– Photo by Benjamin Harrison Presidential Site

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Indiana State Bar Association welcomes 25 lawyers to Leadership Development Academy

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Indiana Law Survey Replay | Valparaiso (12

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K&L Gates

- An excellent resource for cases, statutes, guidelines and other materials for electronic discovery is the K&L Gates Electronic Discovery Law website. (<http://www.ediscoverylaw.com/>, accessed 4/21/16)
- The website contains a very helpful database of over 2000 cases that is searchable by keyword as well as having a number of pre-determined case attributes. (<http://www.ediscoverylaw.com/e-discovery-case-database/>, accessed 4/21/16)
- Many of the cases have very short summaries that include the case citation, the nature of the case, the electronic data involved, the electronic discovery issue and searchable attributes.
- A number of the cases have more robust summaries that also may have links to additional materials.
- You can also subscribe to the free Blog Update.

http://www.ediscoverylaw.com/ Electronic Discovery Law | L... X

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K&L GATES Electronic Discovery Law

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Electronic Discovery Law

Legal issues, news and best practices relating to the discovery of electronically stored information.

IN CRIMINAL CASE, FAILURE TO PRESERVE RESULTS IN EXCLUSION OF ALL TEXT MESSAGES, POSSIBLE ADVERSE INFERENCE

United States v. Vaughn, No. 14-23 (JLL), 2015 WL 6948577 (D.N.J. Nov. 10, 2015)

In this criminal case, a *pro se* defendant sought sanctions, including dismissal of the indictment, for the Government's failure to preserve text messages relevant to its investigation. Upon examination of the facts, including the Government's acknowledged failure to preserve certain text messages and constantly changing explanations surrounding that failure as well as the "different level of diligence" applied to different text messages (care was taken to preserve certain messages, but not others), the court determined sanctions were warranted. Accordingly, the court ordered that the Government would be precluded from using any text messages in its case in chief and reserved judgment until trial regarding the propriety of

Dec 09, 2015

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K&L GATES Electronic Discovery Law

E-DISCOVERY CASE DATABASE

Search nearly 3000 cases collected from state and federal courts involving electronic discovery issues by keyword, or by any combination of 36 different case attributes, including on-site inspection, format of production, allegations of spoliation, or involving data that is "not reasonably accessible," etc.



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Electronic Discovery Case Database

K&L Gates maintains and continually updates a database containing over 2,000 electronic discovery cases collected from state and federal jurisdictions around the United States. This database is searchable by keyword, as well as by any combination of 31 different case attributes, e.g., on-site inspection, allegations of spoliation, motion for a preservation order, etc. Each search will produce a list of relevant cases, including a brief description of the nature and disposition of each case, the electronic evidence involved and a link to a more detailed case summary if available. For an alphabetical list of all cases contained within the database, click the search button at the bottom of the page.

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or FRE 502 |
| <input type="checkbox"/> FRCP 37(e) Safe Harbor | <input type="checkbox"/> FRCP 26(b)(2)(C)
Limitations | <input type="checkbox"/> Local Court Rule, Form
or Guideline |

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Injunction | <input type="checkbox"/> Motion for Preservation
Order | <input type="checkbox"/> Early Conference or
Discovery Plan |
| <input type="checkbox"/> Motion to Compel | <input type="checkbox"/> Motion for Protective
Order | <input type="checkbox"/> Third-Party Discovery |
| <input type="checkbox"/> Motion for Sanctions | | |

Particular Issues

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|---|---|---|
| <input type="checkbox"/> Data Preservation | <input type="checkbox"/> Mirror Images | <input type="checkbox"/> Cost Shifting |
| <input type="checkbox"/> Records Retention Policy | <input type="checkbox"/> On-Site Inspection | <input type="checkbox"/> Spoliation |
| <input type="checkbox"/> Backup Media Recycling | <input type="checkbox"/> Keyword Searches | <input type="checkbox"/> Court-Appointed Expert |
| <input type="checkbox"/> Backup Tapes | <input type="checkbox"/> Format of Production | <input type="checkbox"/> Privilege or Work Product |
| <input type="checkbox"/> Deleted Data Recovery | <input type="checkbox"/> Metadata | <input type="checkbox"/> Lack of Cooperation or
Inaccurate Representations |
| <input type="checkbox"/> Admissibility | <input type="checkbox"/> Adequacy of Search/Identification
or Collection (added 03/13) | <input type="checkbox"/> Computer Assisted Review |

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E-Discovery Rules

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<input type="checkbox"/> FRCP 37(e) Safe Harbor	<input type="checkbox"/> FRCP 26(b)(2)(C) Limitations	<input type="checkbox"/> Local Court Rule, Form or Guideline

Context

<input type="checkbox"/> TRO or Preliminary Injunction	<input type="checkbox"/> Motion for Preservation Order	<input type="checkbox"/> Early Conference or Discovery Plan
<input type="checkbox"/> Motion to Compel	<input type="checkbox"/> Motion for Protective Order	<input type="checkbox"/> Third-Party Discovery
<input type="checkbox"/> Motion for Sanctions		

Particular Issues

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<input type="checkbox"/> Records Retention Policy	<input type="checkbox"/> On-Site Inspection	<input type="checkbox"/> Spoliation
<input type="checkbox"/> Backup Media Recycling	<input type="checkbox"/> Keyword Searches	<input type="checkbox"/> Court-Appointed Expert
<input type="checkbox"/> Backup Tapes	<input type="checkbox"/> Format of Production	<input type="checkbox"/> Privilege or Work Product
<input type="checkbox"/> Deleted Data Recovery	<input type="checkbox"/> Metadata	<input type="checkbox"/> Lack of Cooperation or Inaccurate Representations
<input type="checkbox"/> Admissibility	<input type="checkbox"/> Adequacy of Search/Identification or Collection (added 03/13)	<input type="checkbox"/> Computer Assisted Review

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Case Citation:	Bass v. Miss Porter's School, 2009 WL 3724968 (D. Conn. Oct. 27, 2009)
Nature of Case:	Claims arising from alleged bullying and harassment of private school student
Electronic Data Involved:	Facebook
E-Discovery Issue:	Upon in camera review of all documents produced to plaintiff by Facebook pursuant to subpoena, and in response to plaintiff's objection to producing all such documents on the grounds that many were irrelevant and immaterial, court found "no meaningful distinction" between the pages produced and the pages withheld and stated that "Facebook usage depicts a snapshot of the user's relationship and state of mind at the time of the content's posting" and that "relevance is more in the eye of the beholder" such that production should not be limited to plaintiff's determination of what may be "reasonably calculated to lead to the discovery of admissible evidence" and ordered the production of all documents produced by Facebook to defendants, rather than the smaller subset previously provided
Case Summary:	Not Available
Attributes:	Motion to Compel; Third Party Discovery
Case Citation:	Crispin v. Christian Audigier, Inc., 717 F.Supp.2d 965 (C.D. Cal. 2010)
Nature of Case:	Breach of contract, copyright infringement, breach of covenant of good faith and fair dealing
Electronic Data Involved:	Messages from social networking sites
E-Discovery Issue:	Upon holding that the social networking sites at issue (Facebook, MySpace, Media Temple) were subject to the Stored Communications Act, court quashed subpoenas seeking private messages but, as to subpoenas seeking messages posted to plaintiff's Facebook wall and MySpace comments, remanded for further investigation of plaintiff's privacy settings as to those messages because the Stored Communications Act is not applicable to information readily available to the general public
Case Summary:	Available
Attributes:	Third Party Discovery
Case Citation:	Fawcett v. Altieri, ---N.Y.S.2d---, 2013 WL 150247 (N.Y. Sup. Ct. Jan. 11, 2013)
Nature of Case:	Personal injury
Electronic Data Involved:	Social network content (Facebook, MySpace, Friendster, Flickr, etc.)
E-Discovery Issue:	Court acknowledged the discoverability of social media content but reasoned that "[i]n order to obtain a closed or private social media account by a court order for the subscriber to execute an authorization for their release, the adversary must show with some credible facts that the adversary subscriber has posted information or

PURSUANT TO STORED COMMUNICATIONS ACT, COURT QUASHES SUBPOENA FOR PRIVATE MESSAGES, REMANDS FOR FURTHER CONSIDERATION OF FACEBOOK WALL AND MYSPACE COMMENTS

Crispin v. Christian Audigier, Inc., 717 F. Supp. 2d 965 (C.D. Cal. 2010)

Defendant subpoenaed several social networking sites seeking disclosure of plaintiff's subscriber information and communications relevant to the underlying dispute. Plaintiff sought to quash the subpoenas arguing that such disclosure would violate the Stored Communications Act ("SCA"). The magistrate judge denied plaintiff's motion to quash upon finding the SCA was inapplicable. Plaintiff moved for reconsideration of the order.

Granting reconsideration, the district court judge found the SCA was applicable to the social networking websites at issue (Facebook, MySpace, Media Temple) and quashed the subpoenas to the extent they sought private messages. However, the court recognized a distinction between strictly private messages and those posted more openly, such as on plaintiff's Facebook wall or MySpace comments.* Specifically, the court noted the inapplicability of the SCA to information that is readily available to the general public. Thus, a review of plaintiff's privacy settings was necessary to determine the extent of access allowed to his Facebook wall and MySpace comments (although the court recognized that the record implied that access was restricted). Accordingly, the district court vacated

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Electronic Discovery Case Database

K&L Gates maintains and continually updates a database containing nearly 3,000 electronic discovery cases collected from state and federal jurisdictions around the United States. This database is searchable by keyword, as well as by any combination of 36 different case attributes, e.g., on-site inspection, allegations of spoliation, motion for a preservation order, etc. Each search will produce a list of relevant cases, including a brief description of the nature and disposition of each case, the electronic evidence involved and a link to a more detailed case summary if available. For an alphabetical list of all cases contained within the database, click the search button at the bottom of the page.

Please select one or more of the following case attributes and/or enter keyword search terms below:

E-Discovery Rules

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☐ FRCP 34(b) Procedure or Format
☐ FRCP 26(b)(5)(B) or FRE 502

☐ FRCP 37(e) Safe Harbor (prior to Dec. 1, 2015)
☐ FRCP 26(b)(2)(C) Limitations
☐ Local Court Rule, Form or Guideline

☐ FRCP 26(b)(1) Scope in General (effective Dec. 1, 2015)
☐ FRCP 37(e) Preservation (effective Dec. 1, 2015)

☐ FRCP 26(c) Protective Orders

Context

☐ TRO or Preliminary Injunction
☐ Motion for Preservation Order
☐ Early Conference or Discovery Plan

☐ Motion to Compel
☐ Motion for Protective Order
☐ Third-Party Discovery

☐ Motion for Sanctions

Particular Issues

☐ Data Preservation
☐ Mirror Images
☐ Cost Shifting

☐ Records Retention Policy
☐ On-Site Inspection
☐ Spoliation

☐ Backup Media Recycling
☐ Keyword Searches
☐ Court-Appointed Expert

☐ Backup Tapes
☐ Format of Production
☐ Privilege or Work Product

☐ Deleted Data Recovery
☐ Metadata
☐ Lack of Cooperation or Inaccurate Representations

☐ Admissibility
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☐ Computer Assisted Review

☐ Taxable Costs
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<p>< ></p> <p>Case Citation:</p> <p>Nature of Case:</p> <p>Electronic Data Involved:</p> <p>E-Discovery Issue:</p> <p>Case Summary:</p> <p>Attributes:</p> <p>Case Citation:</p> <p>Nature of Case:</p> <p>Electronic Data Involved:</p> <p>E-Discovery Issue:</p> <p>Case Summary:</p> <p>Attributes:</p> <p>Case Citation:</p> <p>Nature of Case:</p>	<p>Truesdell v. Thomas No. 5:13-cv-552-Oc-10PRL, 2015 WL 2022991 (M.D. Fla. Apr. 30, 2015)</p> <p>Privacy Rights</p> <p>Database</p> <p>Court denied Motion to Compel Production of Electronically Stored Data where plaintiff said that 1500 printed pages of defendant's database usage history were inadequate under FRCP 34(e)(ii) because they were not easily searchable. Plaintiff sought to compel production of the electronic version of the data to include metadata, but the court said that the printed information was not as cumbersome as the plaintiff suggested because only a limited time period contained within the pages was relevant; the data did not originate from the defendant, so the defendant did not have the ability to manipulate the data to provide it only for the limited time period; and the plaintiff was unable to identify any information contained in the electronic version of the data that was not also contained in the printed pages.</p> <p>Not Available</p> <p>Motion to Compel; Format of Production; Metadata</p> <p>Advantor Sys. Corp. v. DRS Technical Servs., Inc., No. 6:14-cv-533-Orl-31DAB, 2015 WL 403308 (M.D. Fla. Jan. 28, 2015)</p> <p>Employment</p> <p>Hard Drive</p> <p>The Magistrate Judge denied Advantor's motion for sanctions against DRS for intentional bad faith spoliation of evidence, finding that sanctions were not warranted because there was no showing that the destroyed evidence was critical to litigate the case issues. DRS had a duty to preserve the contents of a laptop that was used by an employee who was hired away from Advantor and subsequently fired by DRS after receiving notice from Advantor that litigation was reasonably anticipated. Despite having a duty to preserve the contents of the laptop, DRS reformatted the laptop and erased files that were potentially proprietary to Advantor and in violation of their Nondisclosure Agreement. However, Advantor failed to show that the files contained relevant information critical to the case or that DRS was aware the files were on the laptop. Despite the unexplained reformatting of the laptop, sanctions were not granted.</p> <p>Not Available</p> <p>Motion for Sanctions; Data Preservation; Spoliation</p> <p>Am. Fed. Of Musicians of the U.S. and Canada v. Skodam Films, LLC, No. 3:15-mc-122-M-BN, 2015 WL 7771078 (N.D. Tex. Dec. 3, 2015)</p> <p>Breach of contract</p>
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The 2015 amendments to the Federal Rules of Civil Procedure are significant and will have a direct impact on the day to day practice of law, particularly discovery. If you've been putting off your review of the amendments, the time for action is now! Take a few minutes (or a few hours) to review these important amendments and/or attend one of K&L Gates' two live events to learn more! *(Live events are also available via webinar.)*

CLICK HERE for an overview of the rules amendments package.

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Local Rules, Forms and Guidelines of United States District Courts Addressing E-Discovery Issues

Many United States District Courts now require compliance with special local rules, forms or guidelines addressing the discovery of electronically stored information. Below is a collection of those local rules, forms and guidelines, with links to the relevant materials. Please note also that many individual judges and magistrate judges have created their own forms or have crafted their own preferred protocols for e-discovery. These are generally available on the website of the individual judge or magistrate judge and care should be taken to ensure you are aware of any such forms or guidelines in any court you may appear in.

District of Alaska
Local Rules (Civil)
Local Form 26(f): Scheduling and Planning Conference Report
Local Rule 16.1 Pre-Trial Procedures (requiring use of Local Form 26(f) or one substantially similar)

Eastern and Western Districts of Arkansas
Local Rule 26.1 Outline for Fed. R. Civ. P. 26(f) Report

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Kroll Ontrack

- A second excellent resource for materials on electronic discovery is the Kroll Ontrack. (<http://www.krollontrack.com/>, accessed 4/21/16)
- This website includes blogs on electronic discovery and data recovery, white papers, case studies and industry news.
- It also offers a searchable database of electronic discovery cases that complements what is provided by K&L Gates and is searchable by keyword as well as by e-discovery-related topics and jurisdiction. (<http://www.ediscovery.com/pulse/case-law/>, accessed 4/21/16)
- I find it comforting when both of these databases provide summaries of the same case, but also they may cover different cases, which broadens my collection of cases.

Browser window showing the Kroll Ontrack website. The address bar displays <http://www.krollontrack.com/>. The page features the Kroll Ontrack logo and navigation links: Home, Company, Events, Resource Library, Support, Email Subscription Center, The Ediscovery Blog, The Data Recovery Blog, Podcasts, Industry News, White Papers, Case Studies, and User Login.

The main content area includes a large banner for "500,000+ Data Recoveries and Counting" featuring images of damaged hard drives. Text on the banner reads: "Recover your data now! Call 800.872.2599 or get a Free Online Quote." To the right, a section titled "Recognized Ediscovery Industry Leader" states: "Leading technology. Advanced document review. Unsurpassed service. Call now 800.347.6105 See for Yourself >".

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The featured article is titled "Discover the 10 worst data disasters from 2015" and includes a "Find out more >" button. The article image shows a damaged laptop.

The footer contains links: Contact Us, Careers, Legal Notices, Privacy Policy, Terms of Use, Site Map, and Follow us... (with social media icons for LinkedIn, Facebook, and Twitter). Copyright notice: Copyright© 2015 Kroll Ontrack Inc. All Rights Reserved.

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Keywords: Privilege, Production



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- 4th Circuit
- 5th Circuit
- 6th Circuit
- 7th Circuit
- 8th Circuit
- 9th Circuit
- 10th Circuit
- 11th Circuit
- Court of International Trade
- DC Circuit
- Federal Circuit
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of Federal Claims
- United States Air Force Court of Criminal Appeals
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Court Rejects Privilege Request for Private Social Networking Site Communications

McMillen v. Hummingbird Speedway, Inc., No. 113-2010 CD (C.P. Jefferson Sept. 9, 2010).

Keywords: Facebook, MySpace, social media, privilege

Court Finds Company Acted Appropriately in Blocking Facebook Following Employee Complaint

Amira-Jabbar v. Travel Servs. Inc., 726 F.Supp.2d 77 (D. Puerto Rico July 28, 2010).

Keywords: Facebook, summary judgment, firewall, social media

Court Denies Discovery of Listserv and Social Media in Post Trial Fee Dispute



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Court Rejects Privilege Request for Private Social Networking Site Communications



Pennsylvania

McMillen v. Hummingbird Speedway, Inc., No. 113-2010 CD (C.P. Jefferson Sept. 9, 2010). In this personal injury litigation, the defendants sought production of the user names, log-in names and passwords granting access to the plaintiff's Facebook and MySpace accounts. Having found comments on the public portions of the plaintiff's social media sites indicated the plaintiff exaggerated his injuries, the defendants argued that private portions might similarly contain impeaching content. Objecting, the plaintiff contended that communications shared among private friends on social network sites are confidential and thus protected against disclosure. Equating the plaintiff's argument with a request for a new "social network site privilege," the court expressed concern that recognizing such a privilege would contravene the purpose and policy of Pennsylvania's broad discovery rules. Thus, finding no reasonable expectation of confidentiality given the clear language contained on both sites regarding the possibility of disclosure, no subjective or objective relational need for privilege outside of attorney-client communications and a failure to outweigh the interests of justice, the court ordered the plaintiff to preserve existing information and provide his Facebook and MySpace user names and passwords to the defendants' counsel.

Keywords: Facebook, MySpace, social media, privilege

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Another Excellent Resource

- In addition to Kroll Ontrack and K&L Gates for electronic discovery mentioned above, I also recommend the website for Sensei Enterprises, Inc.
- Two of my favorite authors are Sharon Nelson and John Simek, who have been on the cutting edge of security, digital forensics, electronic discovery and legal technology for many years through their company, Sensei Enterprises. (Sensei Enterprises, Inc., <http://www.senseient.com/>, accessed 4/21/16).
- I use their materials extensively in several of the courses I teach at the School of Informatics and Computing (Indiana University).
- One suggestion is that all paralegals and lawyers register for their free article distribution service.

Reading and Understanding Cases

- Party names
- Jurisdiction and level of court (controlling v. persuasive)
- Judge
- Date of case
- Holding
- Major issue or issues
- Keywords, headings, headnotes, etc.
- Prior history
- Case summary and facts
- Cases and other materials cited
- KWIK or highlighted search terms
- Shepard's Citations – or equivalent in search system you are using
- Briefing a case – excellent way to interpret the law
- Reading commentary about a case - blogs, journal articles, social media, etc.

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- How to Write a Case Brief for Law School: Excerpt reproduced from Introduction to the Study of Law: Cases and Materials, Third Edition (LexisNexis 2009) by Michael Makdisi & John Makdisi, <http://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page>, accessed 4/21/16.
- How to Brief a Case. John Jay College of Criminal Justice, <http://www.lib.jjay.cuny.edu/research/brief.html>, accessed 4/21/16.
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868 F. Supp. 2d 137, *2012 U.S. Dist....

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MONIQUE DA SILVA MOORE, et al., Plaintiffs, -against- PUBLICIS GROUPE & MSL GROUP, Defendants.

11 Civ. 1279 (ALC) (AJP)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

868 F. Supp. 2d 137; 2012 U.S. Dist. LEXIS 83659

June 15, 2012, Decided

June 15, 2012, Filed

SUBSEQUENT HISTORY: Motion granted by, Class certification granted by [Moore v. Publicis Groupe SA, 2012 U.S. Dist. LEXIS 92675 \(S.D.N.Y., June 28, 2012\)](#)

PRIOR HISTORY: [Moore v. Publicis Groupe SA, 2012 U.S. Dist. LEXIS 58742 \(S.D.N.Y., Apr. 25, 2012\)](#)

CASE SUMMARY

OVERVIEW: Plaintiffs' judicial recusal motion under 28 U.S.C.S. § 455(a) was untimely in that the primary bases for recusal, involving the judge's support for predictive coding as a search method for production of electronically stored information, and certain of the judge's relationships and comments, were well known to plaintiff months before the motion. Moreover, the motion failed on the merits.

OUTCOME: Recusal motion denied.

CORE TERMS: coding, recusal, predictive, discovery, protocol, ediscovery, appearance, presentation, bias, computer-assisted, technology, impartiality, partiality, untimely, visited, http, disqualification, educational, consultant, speaking, www, movant, sponsored, uscourt, vendor, pdf, observer, funding, recuse, press release

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^{HNL} Under 28 U.S.C.S. § 455(a), any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C.S. § 455(a). The purpose of § 455(a) is to

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Moore v. Publicis Groupe, 2012 U.S. Dist. LEXIS 83659

Moore v. Publicis Groupe, 868 F. Supp. 2d 137, 2012 U.S. Dist. LEXIS 83659 (S.D.N.Y. 2012)

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Unrestricted *Shepard's Summary*

No negative subsequent appellate history.

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Other Sources: Law Reviews (5)

PRIOR HISTORY (3 citing references) [Hide Prior History](#)

1. *Moore v. Publicis Groupe SA*, 2012 U.S. Dist. LEXIS 19857, 81 Fed. R. Serv. 3d (Callaghan) 1260 (S.D.N.Y. Feb. 14, 2012)
2. Later proceeding at:
Da Silva Moore v. Publicis Groupe, 287 F.R.D. 182, 2012 U.S. Dist. LEXIS 23350, 18 Wage & Hour Cas. 2d (BNA) 1479 (S.D.N.Y. 2012)
3. Adopted by, Objection overruled by:
Moore v. Publicis Groupe SA, 2012 U.S. Dist. LEXIS 58742 (S.D.N.Y. Apr. 25, 2012)
▶ Motion denied by (CITATION YOU ENTERED):
Moore v. Publicis Groupe, 868 F. Supp. 2d 137, 2012 U.S. Dist. LEXIS 83659 (S.D.N.Y. 2012)

SUBSEQUENT APPELLATE HISTORY (6 citing references) [Show Subsequent Appellate History](#)

CITING DECISIONS (12 citing decisions)

1ST CIRCUIT - U.S. DISTRICT COURTS

10. Followed by:
United States v. Samson, 2015 U.S. Dist. LEXIS 119273 (D. Mass. Sept. 8, 2015)

Definition of the Poor Man's “Shepards”

- Back in 2006, Hilyerd commented that “in some circles an even lower cost alternative is mentioned for checking to see if a particular opinion is still part of the law of a jurisdiction.
- This method is known as the ‘poor man's Shepard's.’
- It consists of using free case law databases to determine if the courts in a jurisdiction are still relying on a particular opinion in their newer opinions.
- This is done by using the name of the opinion the researcher wishes to check as a search term in the database and seeing if new opinions can be located.
- While this method is available, it is very sloppy research and should only be used if no access is available to other methods.”

A Hybrid Strategy to Save Costs Without Sacrificing Retrieval

- Rather than relying totally on a “poor man’s” approach, a hybrid strategy may be in order.
- Use the Internet and free case law databases as a first step.
- If more recent cases or materials are located, utilize the Shepard’s service, either online (through LexisNexis or using Westlaw’s KeyCite) or through the printed volumes.
- This will save costs and time without sacrificing the unique information and peace of mind that Shepardizing or using Westlaw’s KeyCite feature can provide.
- Levitt and Davis devote Chapter 18 to several free alternatives to using either LexisNexis or Westlaw.
- Among these options are Google Scholar and FindLaw as well as a party name or case number as a keyword search.
- In terms of my electronic discovery research, this is often the first thing I try after I have located a case summary through either the K&L Gates or Kroll Ontrack case database.

Mandatory (Controlling, Binding) v. Persuasive Authority

- **Primary v. Secondary**

Legal researchers utilize two types of authority, referred to as primary and secondary authority.

- Primary authority is the law, which includes constitutions, statutes and ordinances, rules and regulations, and case law. These authorities form the rules that courts follow.
- Secondary authority is not the law. Secondary authorities, such as legal dictionaries and encyclopedias, books and treatises, and journal articles, explain and analyze the law and help researchers both understand and locate primary authorities.

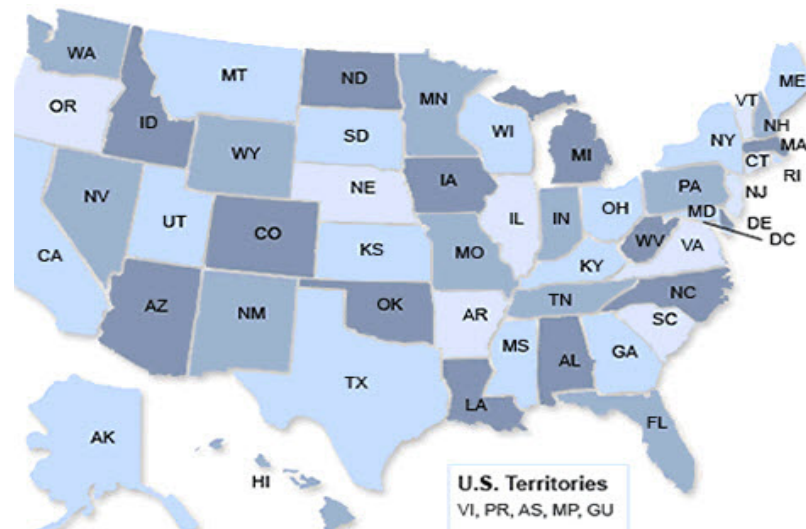
- **Mandatory v. Persuasive**

- Authorities that courts must follow are called mandatory (or binding) authority.
- Authorities that courts may follow if persuaded to do so are called persuasive (or non-binding) authority.
- Secondary authority is always persuasive. Primary authority (the law) may be mandatory or persuasive depending upon the jurisdiction where the dispute is to be decided and the level of the court that decided a particular case.

Slides 68-75 from Circuit Riders: Legal Research Training for Non-Lawyers, <http://guides.law.sc.edu/c.php?g=315482&p=2108364>, accessed 4/21/16.

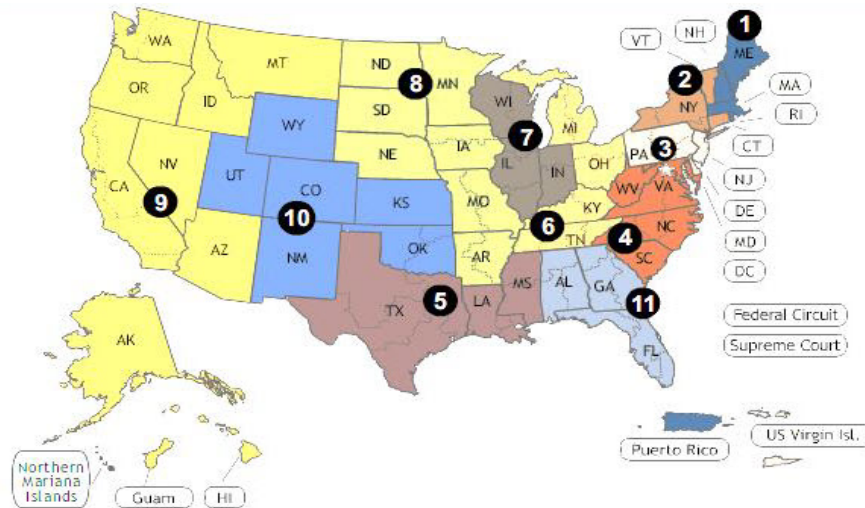
State Law Issue

- State courts apply state statutes and regulations and follow precedent from that state. For example, South Carolina courts must apply South Carolina statutes, regulations, and case law. If a South Carolina court has not ruled on a particular legal issue, it may be persuaded by a decision from a Georgia court.



Federal Law Issue

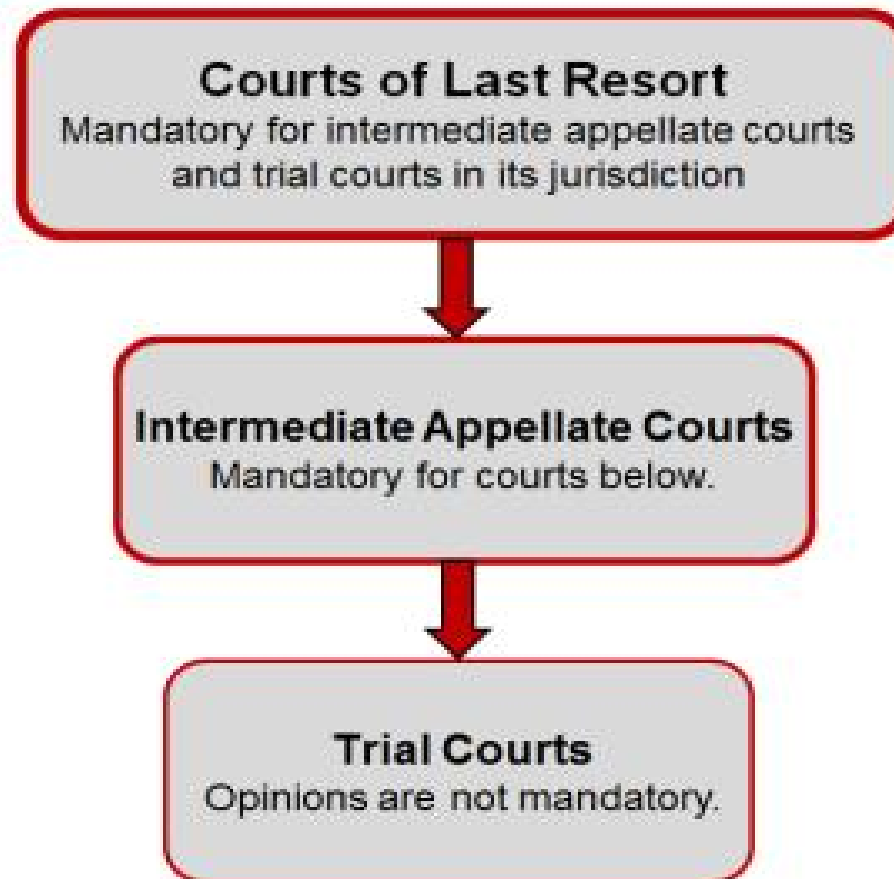
- For issues of federal law, federal courts apply federal statutes and regulations and precedent from federal courts in their circuit. If a federal court has not ruled on a particular legal issue, it may be persuaded by a decision from a different federal circuit.
- NOTE: United States Supreme Court decisions are *mandatory* on issues of federal law for all state and federal courts.



Level of Court

- Whether or not a decision (case) is mandatory or persuasive within a particular jurisdiction (state or federal) depends upon the level of the court that decided it.
- State and federal courts typically follow the court structure depicted in the diagram on the next slide.
- Trial court decisions are not mandatory for any court.
- Intermediate appellate court decisions are mandatory for the trial courts below.
- Decisions of the highest appellate court or court of last resort are mandatory for both the intermediate appellate courts and trial courts below.

Level of Court



Example from South Carolina

- The South Carolina Supreme Court is our court of last resort. Its decisions are mandatory for our intermediate appellate court, the South Carolina Court of Appeals, and all South Carolina trial courts. Decisions of the South Carolina Court of Appeals are mandatory for South Carolina trial courts only.
- Decisions of the South Carolina Supreme Court may be appealed to the United States Supreme Court if accepted via writ of certiorari on an issue of federal law.

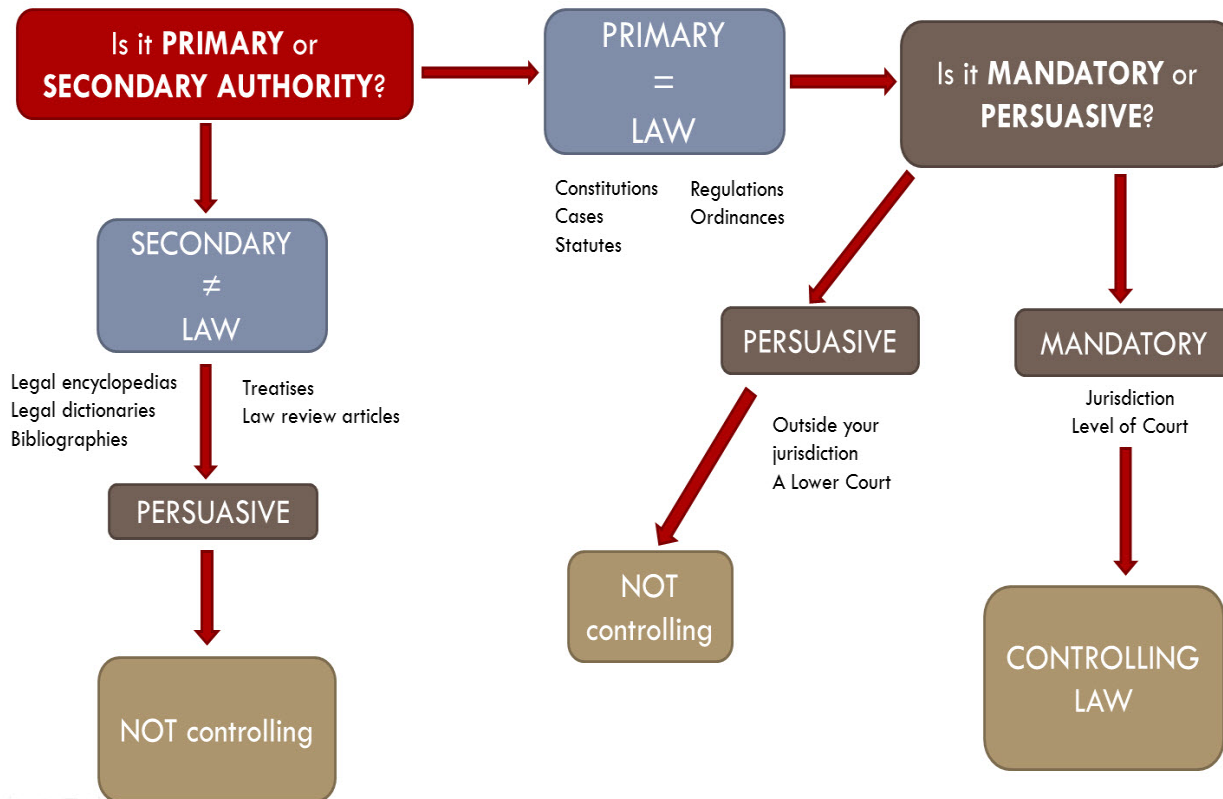


The Federal System

- The federal court system is divided into eleven numbered circuits, the District of Columbia, and the Federal Circuit.
- The decisions of the United States Supreme Court are mandatory for all federal circuit courts of appeals and all federal district courts.
- The decisions of the courts of appeal for each of these circuits are mandatory for the federal district (trial) courts within that circuit.



Evaluating Legal Sources



Helpful Sources


- Mandatory vs. Persuasive Cases, http://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/which_court_is_bindingPainter-and-mayer-final.pdf, accessed 4/21/16.
- Doing Legal Research, <http://cc-courthelp.org/index.cfm?pageid=2974&noheader=1>, accessed 4/21/16.
- Mandatory v. Persuasive Authority, <http://lawguides.scu.edu/authority>, accessed 4/21/16.
- Types of Legal Authorities, <https://www.law.umaryland.edu/marshall/researchguides/tmllguide/1sec3.html>, accessed 4/21/16.
- Case Law, http://nationalparalegal.edu/public_documents/courseware_asp_files/researchLitigation/JudicialStructure/CaseLaw.asp, accessed 4/21/16.

Dealing with Too Much or Too Little Case Law

- If too much case law, prioritize:
 - Highest level court
 - Mandatory (controlling, binding) in the jurisdiction
 - Most recent
 - Find a good law review article that summarizes the issues
 - Have you “closed the loop”?
 - Shepardize to make sure what you have is still good law
- If too little case law:
 - Check search strategy
 - Use different keywords
 - Check the particular characteristics of the search engine/system you are using
 - Watch a webinar or tutorial on how to use the search engine/system more effectively
 - Contact a law librarian
 - Contact the search system vendor
 - Find a law review or recent blog on the subject

Other Issues

- Additional thoughts.
- Any questions?



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for your continuing education needs!

Please visit us online at **www.ipe-sems.com** for a complete list of
upcoming learning opportunities or for more information.